

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

STAT IMAGING, LLC, )  
                          )  
                          )  
Plaintiff,            )  
                          )  
v.                     )                   Case No. 13-cv-1921  
                          )  
                          )  
MEDICAL SPECIALISTS, INC., P.C. and )  
FRANCISCAN ALLIANCE, INC.         )  
d/b/a FRANCISCAN MEDICAL         )  
SPECIALISTS                 )  
                          )  
Defendants             )

**COMPLAINT**

Plaintiff Stat Imaging, LLC (“Stat Imaging”), by and through its undersigned attorney, hereby complains against Medical Specialists, Inc., P.C. (“Medical Specialists”) and Franciscan Alliance, Inc. d/b/a Franciscan Medical Specialists (“Franciscan”) as follows:

**THE PARTIES, JURISDICTION, AND VENUE**

1.     Stat Imaging is an Illinois limited liability company whose members are radiologists domiciled in Illinois. Stat Imaging maintains offices at various locations in Lake County and DuPage County, Illinois.
2.     Medical Specialists is an Indiana professional corporation with a principal place of business in Munster, Indiana.
3.     Franciscan is an Indiana corporation with a principal place of business in Mishawaka, Indiana.
4.     Franciscan currently operates a health care organization under the assumed name Franciscan Medical Specialists.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 (a)(1) in that the claims asserted herein are between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to this matter occurred within this District.

### **FACTUAL BACKGROUND**

#### **The Radiology Services Agreement**

7. Medical Specialists and Radiology Imaging Solutions, Ltd. (Stat Imaging's predecessor in interest) entered into a Radiology Services Agreement (the "Agreement") on April 5, 2006. A copy of the Agreement, with all amendments thereto (except for a duplicative copy of the original agreement that was an exhibit to the first amendment and ancillary joinder and power of attorney agreements executed with individual physicians pursuant to the Agreement's terms), is attached to this Complaint as Exhibit 1.

8. On August 14, 2006, Radiology Imaging Solutions, Ltd. assigned all rights and obligations in the Agreement to Stat Imaging with the consent of Medical Specialists. A copy of the written assignment (the "Assignment") is attached hereto as Exhibit 2. Pursuant to the Assignment, Stat Imaging became the "Professional Group" referenced in the Agreement.

9. As recited in the Agreement, Medical Specialists operated certain medical imaging equipment (collectively the "Imaging Equipment") used to perform diagnostic studies ("Scans/Studies") at facilities located at 761 45<sup>th</sup> Avenue, Suite 114, Munster, Indiana and 919 Main Street, Suite 204, Dyer, Indiana (collectively, the "Facility").

10. Pursuant to Paragraph 2 of the Agreement, Medical Specialists engaged Stat Imaging to provide reading, interpretation, and evaluation of Scans/Studies ("Radiology Services) for the Facility.

11. Paragraph 10 of the Agreement provides that (with three narrow exceptions, none of which are applicable to this dispute) Stat Imaging would be the exclusive radiology group providing Radiology Services for the Facility.

12. Paragraph 11 of the Agreement provides that Stat Imaging would be paid for the Radiology Services it performed for the Facility in accordance with a defined compensation schedule.

13. Paragraph 14 of the Agreement provides that the initial term of the Agreement would be two years and that, thereafter, the Agreement would automatically renew for successive one year terms unless either party provided written notice of its intent not to renew at least 90 days before expiration of the then-current term.

14. Paragraph 15 of the Agreement did allow either party to terminate the Agreement for material breach, but only after providing thirty days' written notice and an opportunity to cure said breach.

15. From 2006 until December 31, 2012, Stat Imaging provided Radiology Services under the Agreement and the Agreement was automatically renewed pursuant to Paragraph 14 on July 5, 2008 and every year thereafter.

16. The Agreement was most recently renewed pursuant to Paragraph 14 on July 5, 2012. Accordingly, absent an uncured material breach, the Agreement could be terminated no earlier than July 4, 2013.

17. At no time prior to the filing of this lawsuit was Stat Imaging provided notice of any material breach under the Agreement pursuant to Paragraph 15 of the Agreement.

**The Medical Specialists-Franciscan Transaction and the Breach of the Agreement**

18. In October 2012, Franciscan announced that it had acquired Medical Specialists, which would thereafter be known as Franciscan Medical Specialists. The text of a Franciscan press release announcing the transaction is attached hereto as Exhibit 3.

19. Between October 2012 and December 2012, Stat Imaging continued to provide services under the Agreement by reading Scans/Studies generated at the Facility, and was paid by checks drawn upon the account of Franciscan Medical Specialists for its services in accordance with the compensation schedule set forth in the Agreement.

20. In late 2012, Stat Imaging was advised by Franciscan Medical Specialists that, effective January 1, 2013, it would cease to use Stat Imaging to perform Radiology Services for the Facility and would instead employ another individual to provide those services.

21. Stat Imaging protested this decision, noting (among other things) that the term of the Agreement continued through July 4, 2013.

22. On December 31, 2012, Franciscan Medical Specialists in fact terminated Stat Imaging's access to its systems and ceased to use Stat Imaging to perform Radiology Services for the Facility.

23. Upon information and belief, Imaging Equipment is still used at the Facility to perform Scans/Studies which are furnished to other entities or persons for the performance of Radiology Services in violation of Stat Imaging's exclusive rights under the Agreement.

**COUNT ONE**

**(Breach of Contract – Medical Specialists)**

24. Stat Imaging repeats and incorporates paragraphs 1-23 of this Complaint as if fully set forth herein.

25. The Agreement is a valid and enforceable contract with Medical Specialists that affords Stat Imaging the exclusive right to perform Radiology Services for the Facility through July 4, 2013.

26. As is evidenced by the absence of any notice of material breach prior to suit, Stat Imaging has performed all conditions precedent required of it under the Agreement.

27. The termination of Stat Imaging prior to July 4, 2013 and the employment of other individuals or entities to provide Radiology Services for the Facility constitute breaches of the Agreement.

28. Stat Imaging has been damaged by the Agreement's breach insofar as it is not being paid to perform Radiology Services for the Facility.

29. At no point did Medical Specialists seek or obtain Stat Imaging's agreement to accept Franciscan's performance of the Agreement for that of Medical Specialists.

30. Medical Specialists accordingly remains liable for any breach of the Agreement, irrespective of any assignment to Franciscan.

WHEREFORE, Stat Imaging demands judgment against Medical Specialists as follows:

- (a) An award of damages in excess of \$75,000;
- (b) Appropriate pre-judgment interest; and
- (c) Such other relief as the Court deems just and reasonable.

**COUNT TWO**

**(Breach of Contract -- Franciscan)**

31. Stat Imaging repeats and incorporates paragraphs 1-30 of this Complaint as if fully set forth herein.

32. The Agreement is a valid and enforceable contract with Medical Specialists that affords Stat Imaging the exclusive right to perform Radiology Services for the Facility through July 4, 2013.

33. Upon information and belief, as evidenced by its continued use of Stat Imaging to perform Radiology Services prior to January 1, 2013 and the payments made to Stat Imaging by Franciscan Medical Services, Franciscan either:

- (a) Has succeeded to Medical Specialists obligations under the Agreement by corporate merger;
- (b) Has accepted an assignment of Medical Specialists' rights and obligations under the Agreement; or
- (c) Has continued to use the Imaging Equipment at the Facility as the apparent owner thereof and used Stat Imaging's Radiology Services as if the Agreement had been assigned to it.

34. As is evidenced by the absence of any notice of material breach prior to suit, Stat Imaging has performed all conditions precedent required of it under the Agreement.

35. The termination of Stat Imaging prior to July 4, 2013 and the employment of other individuals or entities to provide Radiology Services for the Facility constitute breaches of the Agreement.

36. Stat Imaging has been damaged by the Agreement's breach insofar as it is not being paid to perform Radiology Services for the Facility.

WHEREFORE, Stat Imaging demands judgment against Franciscan as follows:

- (a) An award of damages for Franciscan's breach in excess of \$75,000;
- (b) Appropriate pre-judgment interest; and
- (c) Such other relief as the Court deems just and reasonable.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable.

Dated: March 12, 2013

By: s/ John C. Martin

John C. Martin  
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